

RECEIVED  
REMCHOWE & PURCELL, LLP  
FEDERAL ELECTION COMMISSION  
COUNSEL

201 DOLORES AVENUE  
SAN LEANDRO, CA 94577  
PHONE: (510) 346-6200  
FAX: (510) 346-6201  
E-MAIL: harrison@rjp.com  
WEBSITE: www.rjp.com

2009 AUG 17 AM 11:57

OFFICE OF GENERAL  
COUNSEL

Joseph Remcho (1944-2003)  
Robin B. Johansen  
Kathleen J. Purcell (Ret.)  
James C. Harrison  
Thomas A. Willis  
Karen Getman  
Margaret R. Prinzing  
Kari Krogaeng

SACRAMENTO PHONE: (916) 264-1818

August 14, 2009

**VIA FEDERAL EXPRESS & FACSIMILE**

Jeff Jordan  
Office of General Counsel  
Federal Election Commission  
999 "E" Street, NW  
Washington, DC 20463  
FAX: (202) 219-3923

Re: *MUR 6207*

Dear Mr. Jordan:

We represent Mark DeSaulnier, DeSaulnier for Congress, Mark DeSaulnier for Senate 2012, and Rita Copeland (together "respondents") in the above-mentioned matter filed by Jason Bezis.<sup>1</sup> Respondents received notification of the complaint from the FEC on August 1, 2009. Respondents request that this matter remain confidential in accordance with 2 U.S.C. section 437g(a)(4)(B).

The complaint should be dismissed without any further action because it fails to allege any facts or authority establishing a violation of federal campaign finance laws.

The complaint alleges that respondents have circumvented the Federal Election Campaign Act and the Bipartisan Campaign Reform Act of 2002 ("the Act") because the DeSaulnier for Senate 2012 state campaign committee mailed campaign literature to voters in State Senator Mark DeSaulnier's Senate District. The Senate District overlaps with the 10th Congressional District in which Mark DeSaulnier is currently a candidate in a special primary election scheduled for September 1, 2009 and a general election scheduled for November 3,

<sup>1</sup> Respondents' designation of counsel forms accompany this letter.

2009 AUG 17 AM 11:57  
OFFICE OF GENERAL  
COUNSEL

CONFIDENTIAL

10044280183

Jeff Jordan  
Federal Election Commission  
August 14, 2009  
Page 2

2009.<sup>2</sup> The complaint alleges that Mr. DeSaulnier used state campaign funds to engage in "federal election activity" by engaging in communications with his Senate District constituents. The mailings, however, violate no law, as campaign spending from a state account by federal candidates who are also state candidates is explicitly excepted from the Act's restrictions under 2 U.S.C. section 441i(e)(2) and 11 C.F.R. section 300.63.

Section 441i(e)(1) states as follows:

A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not—

(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

(B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds—

(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 315(a) (2 U.S.C. § 441a(a)); and

(ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

Section 441i(e)(2), however, provides that the contribution and spending limitations and reporting requirements for federal candidates

do[ ] not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or

<sup>2</sup> Contrary to Mr. Bezis's allegations, the mailings attached to the complaint were sent to voters in Senator DeSaulnier's Senate District who resided both within the boundaries of the 10th Congressional District as well as outside of the 10th Congressional District. Moreover, Mark DeSaulnier is in fact a candidate for re-election to his State Senate seat in 2012. Senator DeSaulnier has filed a Declaration of Intention to be a candidate for the election and has established a campaign committee for the 2012 election. (See Declaration of Intention [Form 501] and Statement of Organization [Form 410], attached.)

Jeff Jordan  
Federal Election Commission  
August 14, 2009  
Page 3

spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.<sup>3</sup>

As the FEC has explained:

[T]he restrictions of 2 U.S.C. 441i(e)(1) do not apply to any Federal candidate or officeholder who is or was also a candidate for a State or local office so long as the solicitation, receipt or spending of funds: (1) is solely in connection with his or her State or local campaign; (2) refers only to him or her, to other candidates for that same State or local office, or both; and (3) is permitted under State law.

AO 2007-01 (McCaskill).

The FEC's regulations make clear that section 441(e) does not apply to a federal candidate who is concurrently a state candidate, like Mark DeSaulnier. Regulation 300.61 applies the Act's reporting and limitation requirements to federal candidates who spend funds in connection with a federal election, and section 300.62 allows federal candidates to spend funds in connection with state elections consistent with state law, as long as they do not exceed the Act's contribution limits. However, section 300.63 states that section 300.62 shall not apply to a federal candidate who is also a state candidate under the conditions outlined above.

The purpose of the exception set forth in section 441i(e)(2) and regulation 300.63 "is to provide an equitable basis for a federal candidate or officeholder to conduct his or her state or local campaign so that he or she is not financially disadvantaged when competing with a nonfederal opponent who may raise and spend funds without the same restrictions that section 441i(e) imposes on federal candidates and officeholders." AO 2007-26. The FEC has thus applied the exception to a variety of spending by state candidates who are also federal candidates or officeholders. For example, the FEC has allowed spending by a federal officeholder's mayoral exploratory committee outside of the federal limitations, well before the mayoral election. AO 2005-12 (Fattah) (U.S. Representative may raise and spend funds for potential mayoral campaign that exceed BCRA's contribution limits). "Representative Fattah and his exploratory committee may raise and spend funds in excess of the amount limits contained in the Act exclusively in connection with his candidacy for mayor of Philadelphia, so long as their activities refer only to Representative Fattah as a candidate for mayor of Philadelphia, to other candidates for that same office, or both, and so long as the amounts and sources of the funds are consistent with state law." AO 2005-12. The FEC has also determined that section 441i(e)(2) allows a federal officeholder to solicit, receive, and spend funds exceeding federal limits in order

<sup>3</sup> This exception also applies to the activities of agents and campaign committees acting on behalf of the officeholder or candidate. AO 2007-01; AO 2005-12; 2005-02.

10044280185

Jeff Jordan  
Federal Election Commission  
August 14, 2009  
Page 4

to retire debt from his or her previous campaigns for state office. AO 2009-06 (Risch); AO 2007-01 (McCaskill).

10044280186

Instead of citing these Advisory Opinions, which are directly on point, the complaint relies upon three opinions that address different issues. Advisory Opinion 2003-32 (Tenenbaum) considered whether a federal candidate (and former state candidate) may donate leftover state campaign funds to 501(c)(3) organizations, the South Carolina Democratic Party, and a State legislative caucus committee before terminating the state campaign account. Advisory Opinion 2006-38 (Casey) likewise answered the question of whether a federal officeholder and candidate may donate his or her state campaign funds to State or local candidates or to the nonfederal account of a State or local Democratic party organization, or use them for travel by the federal officeholder in connection with state or local campaign events or for other events that are solely in connection with State or local elections. Neither opinion answered the question of whether a federal candidate who is also state candidate may spend state campaign funds on his or her own state campaign activity. The opinions cited by complainant, therefore, are not relevant to the question posed by the complaint.

Advisory Opinion 2005-02 (Corzine II) also concerned a question outside the scope of the complaint here: whether a federal officeholder who is also a gubernatorial candidate may solicit donations to other State and local candidates without adhering to the limitations and prohibitions of FECA. In response, the FEC stated that "Senator Corzine and his agents may raise funds for the campaigns of the other New Jersey State and local candidates, State PACs, and the non-Federal accounts of State and local party committees *only* in amounts that are not in excess of 2 U.S.C. 441a(a) and from sources that are permissible under the limitations and prohibitions of the Act." AO 2005-12 (emphasis in original). The Advisory Opinion did not address whether Governor Corzine could solicit contributions for his gubernatorial campaign, or whether he could spend those funds on his state campaign, which is what is at issue here.

Moreover, the FEC's declaration in Advisory Opinion 2005-02 that "the limitations and prohibitions in 2 U.S.C. 441(e)(1)(B) apply to a Federal officeholder at any time, regardless of whether any Federal candidate appears on the ballot for the relevant election," highlights the obvious corollary, which is that the exception for federal candidates who are also state candidates in section 441(e)(2) should also apply at any time, regardless of whether a state election is imminent. Indeed, section 441(e)(2) contains no limitations with respect to timing or proximity to a state election. Such an "exception to the exception" should not be read into section 441(e)(2).<sup>4</sup>

<sup>4</sup> The complaint's assertion that the mailings were not solely in connection with the state senate election because "they also had a tendency to" promote or support Mark DeSaulnier's, Representative Pelosi's and President Barack Obama's federal candidacies has no legal support. Complaint, ¶ 27. "Having a tendency" to promote or support a candidacy is not a standard found in any authority interpreting the Act. Furthermore, the complaint fails to offer any evidence that the mailers in any way supported or promoted a federal candidate.

10044280187

The complaint's attempts to shoehorn the first mailing's reference to President Barack Obama's health care reform initiative and a photograph of President Obama, Vice President Joe Biden and Speaker Nancy Pelosi into federal campaign activity because they promote those federal officials' candidacies cannot withstand scrutiny.<sup>5</sup> The mere reference to a federal official in a mass mailing does not convert the mailing into "[a] public communication that refers to a clearly identified candidate for Federal office, regardless of whether a candidate for State or local election is also mentioned or identified, and that promotes or supports, or attacks or opposes any candidate for Federal office." 11 C.F.R. § 100.24(b)(3); 2 U.S.C. § 431(2)(A)(iii). "Under the plain language of the FECA, the mere identification of an individual who is a Federal candidate does not automatically promote, support, attack, or oppose that candidate." AO 2003-25 (Weinzapfel); *see* 2 U.S.C. § 411i(f); 11 C.F.R. § 300.70 et seq.

Furthermore, in AO 2007-34 (Jackson), the FEC states:

The Commission also notes that a non-Federal candidate may spend non-Federal funds for a public communication in connection with an election for State or local office that refers to a clearly identified Federal candidate so long as the communication does not promote, support, attack or oppose any candidate for Federal office. *See* 2 U.S.C. 441i(f)(2); 11 CFR 300.72; Advisory Opinion 2003-25 (Weinzapfel) . . . .

Thus, the FEC has made clear that Congress did not intend the definition of "a clearly identified federal candidate" under 2 U.S.C. section 431(18) to include a state candidate's reference to federal candidates with whom he wishes to identify in communications with voters in his state office district. By the same token, Senator DeSaulnier's mention of the President's healthcare reform initiative in a mailing about the healthcare issues facing the constituents of Senator DeSaulnier's Senate District does not result in federal campaign activity. As the FEC observed,

One of BCRA's principal sponsors, Senator Feingold, explained that the relevant BCRA provisions would not prohibit "spending non-Federal money to run advertisements that mention that [state candidates] have been endorsed by a Federal candidate or *say that they identify with a position of a named Federal candidate*, so long as those advertisements do not support, attack, promote or oppose the Federal candidate." 148 Cong. Rec. S2143 (daily ed. Mar. 20, 2002).

AO 2003-25.

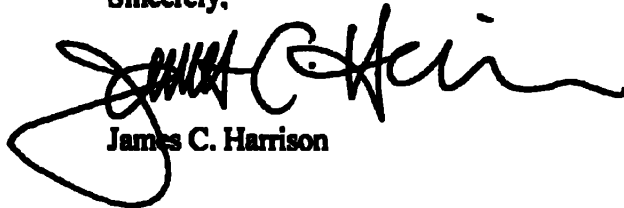
<sup>5</sup> The second mailing contains no reference to other officeholders or candidates.

Jeff Jordan  
Federal Election Commission  
August 14, 2009  
Page 6

Moreover, the mailing's reference to President Obama's health care reform efforts, the photo of President Obama, Vice President Biden, and Speaker Pelosi, and the endorsement by state Senator Tom Torlakson do not remove the mailing from section 441i(e)(2)'s exception, as these references clearly do not advocate the candidacies of these four officeholders and instead fall under the policy rationale set forth in AO 2003-25 for excluding position identification and endorsements from the Act.

In sum, respondents' conduct has been consistent with the requirements of the Federal Election Campaign Act and the FEC's regulations. The complaint should therefore be dismissed without further action. If you would like additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "James C. Harrison", written over a large, stylized loop.

James C. Harrison

JH:NL  
Attachments  
(00087164-2)

10044280188

# Candidate Intention Statement

Type or Print in ink.

10044280189

Date Stamp

501

Hand Delivered Document

DEC 23 2008

RECEIVED AND FILED  
in the office of the Secretary of State  
of the State of California

Check One: ☒ Initial ☐ Amendment (Repeat) \_\_\_\_\_

## 1. Candidate Information:

NAME OF CANDIDATE (Last, First, Middle Initial)

Mark Reginaldson

DAYTIME TELEPHONE NUMBER

925-827-4662

FAX NUMBER (Optional)

925-728-1895

E-MAIL (Optional)

STREET ADDRESS

2001 Bellevue Street

CITY

Concord

STATE

CA

ZIP CODE

94520

OFFICE SOUGHT (POSITION TITLE)

AGENCY NAME

DISTRICT NUMBER, if applicable

7

PARTY: Democrat

State Senator

OFFICE JURISDICTION

☒ State (Complete Part 2.)

☐ City ☐ County ☐ Multi-County:

2012  
(Year of Election)

## 2. State Candidate Expenditure Limit Statement:

(Candidates, judges, judicial candidates, and candidates for local offices are not required to complete Part 2.)

2012  
(Year of Election) ☐ Primary/general election ☒ Special/runoff election

(Check one box)

☒ I accept the voluntary expenditure ceiling for the election stated above.

☐ I do not accept the voluntary expenditure ceiling for the election stated above.

Amendment:

☐ I did not exceed the expenditure ceiling in the primary or special election held on: \_\_\_\_\_ and I accept the voluntary expenditure ceiling for the general or special run-off election.

(Check if applicable)

☐ On \_\_\_\_\_ I contributed personal funds in excess of the expenditure ceiling for the election stated above.

## 3. Verification:

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 12-22-08  
(month, day, year)

Signature

Mark Reginaldson  
(Candidate)

Statement of Organization  
Recipient Committee

Statement Type ☐ Initial  
Not yet qualified ☐ or

Type or period in late

☒ Amendment  
List ID number:

# 1214389

02/29/2009

Date qualified as committee  
(if applicable)

Date qualified as committee

☐ Termination - See Part 6  
List ID number:

#

Date of Termination

STATEMENT OF ORGANIZATION

Date Stamp

410

RECEIVED AND FILED  
In the office of the Secretary of State  
of the State of California

FEB 03 2009

DEBRA BOWEN  
OFFICIAL PRINCIPAL OFFICER

1. Committee Information

NAME OF COMMITTEE

Defender for Senate 2012

STREET ADDRESS (NO PO BOX)  
8429 Redwood Avenue

CITY

San Francisco, CA 94141

MAILING ADDRESS (IF DIFFERENT)

STATE ZIP CODE AREA CODE PHONE

925-527-4662

OPTIONAL: FAX / EMAIL ADDRESS

COMPENSABLE AS

COUNTY WHERE COMMITTEE IS ACTIVE IF DIFFERENT  
THAN COUNTY OF DOMICILE

County Costa

Attach additional information on appropriately labeled continuation sheets.

2. Treasurer and Other Principal Officers

NAME OF TREASURER

Rita Copeland  
STREET ADDRESS

8429 Redwood Avenue  
CITY

San Francisco, CA 94141

NAME OF ASSISTANT TREASURER, IF ANY

STREET ADDRESS

CITY

NAME AND POSITION OF OTHER PRINCIPAL OFFICERS, IF APPLICABLE

MAILING ADDRESS

CITY

3. Verification

I have used all reasonable diligence in preparing this statement and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By

Rita Copeland  
TREASURER OF THE COMMITTEE OF ASSISTANT TREASURER

By

NAME OF CONTROLLING OFFICER, CANDIDATE, OR STATE RESIDENT PROPONENT

By

NAME OF CONTROLLING OFFICER, CANDIDATE, OR STATE RESIDENT PROPONENT

By

NAME OF CONTROLLING OFFICER, CANDIDATE, OR STATE RESIDENT PROPONENT





FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

**STATEMENT OF DESIGNATION OF COUNSEL**  
**Please use one form for each Respondent/Client.**  
**FAX (202) 818-9822**

MUR # 6207

NAME OF COUNSEL: James C. Harrison

FIRM: Remcho, Johansen & Purcell, LLP

ADDRESS: 201 Dolores Avenue

San Leandro, CA 94577

TELEPHONE- OFFICE ( 510 ) 346-6200

FAX ( 510 ) 346-6201

The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission.

8-12-09 MARK DESAULNIER \_\_\_\_\_  
Date Respondent/ Client Signature Title

RESPONDENT/CLIENT MARK DESAULNIER  
(Please Print)

MAILING ADDRESS: PO Box 6066, CONCORD, CA 94524

TELEPHONE- HOME \_\_\_\_\_  
BUSINESS 925 672-2812

Information is being sought as part of an investigation being conducted by the Federal Election  
Commission and the confidentiality provisions of 2 U.S.C. § 437(g)(1)(D)(A) apply. This section  
prohibits making public any investigation conducted by the Federal Election Commission without  
the express written consent of the person under investigation

Rev. 2005

10044280191



FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

**STATEMENT OF DESIGNATION OF COUNSEL**  
**Please use one form for each Respondent/Client.**  
**FAX (202) 219-3923**

MUR # 6207

NAME OF COUNSEL: James C. Harrison

FIRM: Rencho, Johansen & Purcell, LLP

ADDRESS: 201 Dolores Avenue

San Leandro, CA 94577

TELEPHONE- OFFICE ( 510 ) 346-6200

FAX ( 510 ) 346-6201

The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission.

8/6/09  
Date

*Steve Capeland*  
Respondent/Client Signature

Steve  
Title

RESPONDENT/CLIENT DESAUNIER FOR CONGRESS  
(Please Print)

MAILING  
ADDRESS: 5429 MADISON AVE

SACRAMENTO, CA 95841

TELEPHONE- HOME ( ) \_\_\_\_\_

BUSINESS (916) 348-9100

Information is being sought as part of an investigation being conducted by the Federal Election  
Commission and the confidentiality provisions of 2 U.S.C. § 437p(a)(1)(A) apply. This section  
prohibits making public any investigation conducted by the Federal Election Commission without  
the express written consent of the person under investigation.

Rev. 2006

10044280192



FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL  
Please use one form for each Respondent/Client.  
FAX (202) 219-3923

MUR # 6207

NAME OF COUNSEL: James C. Harrison

FIRM: Remcho, Johansen & Purcell, LLP

ADDRESS: 201 Dolores Avenue

San Leandro, CA 94577

TELEPHONE- OFFICE ( 510 ) 346-6200

FAX ( 510 ) 346-6201

The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission.

8/6/09      *Dea Capeland*      *Treas.*  
Date                      Respondent/ Client Signature                      Title

RESPONDENT/CLIENT MARK DE SALLANIER FOR SENATE 2012  
(Please Print)

MAILING  
ADDRESS: 5429 MADISON AVE

SACRAMENTO, CA 95841

TELEPHONE- HOME (                      )                     

BUSINESS ( 916 ) 348-9100

Information is being sought as part of an investigation being conducted by the Federal Election  
Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(1)(A) apply. This section  
prohibits making public any investigation conducted by the Federal Election Commission without  
the express written consent of the person under investigation.

Rev. 2006

10044280193



**FEDERAL ELECTION COMMISSION**

**999 E Street, NW**

**Washington, DC 20463**

**STATEMENT OF DESIGNATION OF COUNSEL**  
**Please use one form for each Respondent/Client.**  
**FAX (202) 219-9923**

**MUR #** 6207

**NAME OF COUNSEL:** James C. Harrison

**FIRM:** Remcho, Johansen & Purcell, LLP

**ADDRESS:** 201 Dolores Avenue

San Leandro, CA 94577

**TELEPHONE- OFFICE** ( 510 ) 346-6200

**FAX** ( 510 ) 346-6201

The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission.

8/6/09 Rita Copeland \_\_\_\_\_  
Date Respondent/ Client Signature Title

**RESPONDENT/CLIENT** RITA COPELAND  
(Please Print)

**MAILING ADDRESS:** 5429 MADISON AVE

SACRAMENTO, CA 95841

**TELEPHONE- HOME** ( \_\_\_\_\_ ) \_\_\_\_\_

**BUSINESS** ( 916 ) 348-9100

Information is being sought as part of an investigation being conducted by the Federal Election  
Commission and the confidentiality provisions of 2 U.S.C. § 437g(c)(1)(B) apply. This section  
prohibits making public any investigation conducted by the Federal Election Commission without  
the express written consent of the person under investigation.

Rev. 2006

10044280194